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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 968 of 2000

Sundar Baiga and another

Vs.

State of Madhya Pradesh
(now Chhattisgarh)

JUDGMENT

Post for 02.07.2007

Sd/-
Sunil Kumar Sinha
Judge

(21)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 968 of 2000

APPELLANT

1. Sundar Baiga, s/o Bisahu Baiga, aged about 45 years, resident of Kallepani, Nabapara, P.S. Bakarkatta, Distt. Rajnandgaon, Madhya Pradesh (Now Chhattisgarh).

2. Rajbai @ Rajbati, aged about 40 years, wife of Sundar Baiga, r/o Kallepani, Nabapara, P.S. Bakarkatta, Distt. Rajnandgao, (C.G).

Versus

RESPONDENT State of Madhya Pradesh (now Chhattisgarh) Through P.S. – Salehpara, Distt. Rajnandgaon (C.G)

(Appeal under Section 374 of Cr.P.C.)

Appearance:

Ku. Nirupama Bajpai, counsel for the appellants.

Shri Ravindra Agrawal, Panel Lawyer, for the State.

JUDGMENT
(02.07.2007)

Sunil Kumar Sinha, J.

(1) Being aggrieved with the judgment of conviction and order of sentence dated 10.2.2000 passed by the Addl. Sessions Judge, Khairagarh, Sessions Division Rajnandgaon, in Sessions Trial No.145/1999, whereby the appellants were convicted u/ss 304(part-II) & 201 I.P.C. and sentenced to undergo R.I. for 10 years and to pay a fine of Rs.100/-, in default of payment fine, to further undergo R.I. for 1 month; and R.I. for 3 years and to pay a fine of Rs.50/-, in default of payment of fine, to further

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undergo R.I. for 15 days; with a further direction to run the sentences concurrently, they have preferred this appeal.

(2) The brief facts are that on 02.7.1999, 4 persons namely Budhiarin Bai (P.W.1 wife of the deceased), Dharmu Baiga (deceased), Sundar Baiga and Raj Bai (accused/appellants), had gone from village Kallepani to village Kopro for purchasing rice from the shop of the Society. When they reached Kopro, they did not go the Society and they went to the house of one Brij Lal Rawat where they all consumed liquor. While leaving his house, the deceased purchased one more bottle of liquor and kept it in the lap of his *Lungi* and all of them started for returning to their village. The allegations are that on the way, when they reached near forest area of village Chover, the accused persons demanded liquor from the deceased which the deceased denied, on which, they abused him and they started quarreling and after throwing him on the ground, accused/appellant no.1 pressed his neck with the assistance of his wife (accused/appellant no.2), which caused his death. When he died, they, with an intention to cause disappearance of evidence, hanged the dead body from a tree to show that it was a suicidal death.

(3) After seeing the dead body, a *merg* intimation (Ex.P.2) was lodged by Pancham Das (P.W.3) on 04.7.1999 at about 9.30 a.m. and thereafter, *Dehati Nalishi* (Ex.P.1) was recorded on 04.7.1999 at about 18.30 hours on the report of Budhiarin Bai (P.W.1), wife of the deceased. During the course of investigation, the inquest on the dead body was prepared on 04.7.1999 under

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Ex.P. 7 and it was sent for postmortem. Dr. Sanjay Kavilash (P.W.5) conducted the post mortem and prepared his report Ex.P.5 on 05.7.1999. He noticed the following external injuries:

1. An abrasion on the left side of the neck admeasuring ½ cm x ¼ cm x ¼ cm
2. 3 small abrasions at the right side of the neck just above the ligature mark, all admeasuring 2cm x 1/4cm x ¼ cm placed at the distance of 1/4cm from each other.
3. An abrasion on the chest just above the left nipple admeasuring 3cm x 1cm
4. Two abrasions on both the elbows admeasuring 2 cm x 1cm.
5. An abrasion on the left knee admeasuring 1 x 1 cm.
6. There was a superficial ligature mark around the neck which was of 3 cm breadth, but there was no elongation in the neck.

As per the report, all the above injuries, except the ligature mark was ante-mortem and the ligature mark was postmortem. On the internal examination, he found that there was a fracture of Cornu of hyoid at its left side and the air passage was congested. According to him, the death was homicidal and it was not suicidal as no evidence of suicide was found and the cause of death was throttling. After completion of the usual investigation, charge sheet was filed u/s 302 & 201 of I.P.C.

(4) The Sessions Court acquitted the appellants u/s 302 I.P.C., however, convicted and sentenced them u/ss. 304 (part-II) & 201 I.P.C. The conviction is based upon the testimony of Budhiarin Bai (P.W.1).

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(5) Learned counsel for the appellants argued that testimony of Budhiarin Bai should not have been relied on as she has not disclosed the story forthwith and had made the disclosure on the 3rd day i.e., 04.7.1999 whereas the incident took place on 02.7.1999.

(6) I have heard learned counsel for the parties at length and have also perused the records of the sessions case.

(7) P.W.1 Budhiarin Bai has deposed about the incident in Para 3 of her evidence. According to her, when she resisted the acts of the appellants, she was threatened by them to her life, therefore, she left the place of occurrence and narrated the story to the villagers. In the cross examination, nothing has been asked from her as to what she was doing for the whole night of 2.7.1999 and the entire day of 03.7.1999. She has explained that on 02.7.1999, due to fear she remained in a field for the night and on the next day, she narrated the story to Akkulu Baiga, Dongru Baiga, Navlu Baiga, Prem Rawat and Sarpanch Vishal Singh etc., and thereafter the *merg* intimation as well as *Dehati Nalish* was recorded. Merely on her such conduct of not going to the police station at once for lodging the report does not by itself classify her to be unreliable witness. If such an incident takes place before the eyes of the wife when her husband is murdered, she will certainly under the shock and fear and she may not be able to do something at once. In the present case, the explanation for lodging the delayed report has been given in

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Dehati Nalishi itself, which appears to be plausible and on this only, the testimony of the wife cannot be disbelieved. Moreover, not a single question has been asked in the cross examination of this witness regarding the delay and about giving false or unreasonable or improbable explanation regarding such delay. The witness is an illiterate lady and in the facts and circumstances of this case her testimony cannot be discarded on this ground alone that she herself did not report the matter to the police prior to the 3rd day. There appears to be no force in the arguments advanced by learned counsel for the appellant and the same cannot be accepted. Except the above, no other point was raised before me.

(8) There appears to be no fault in the judgment of conviction passed by the court below. The appeal has no merits and the same is accordingly dismissed.

Sd/-
Sunil Kumar Sinha
Judge

Rao